MORATORIUM AND STAY LAWS.

The Congress of the United States enacted a law entitled "Soldiers' and Sailors' Civil Relief Act," which was approved March 8th, 1918. Some similar laws have been enacted in many states, but most of them differ therefrom in their scope and terms.

The Legislature of Virginia enacted a law "for the continuance of all proceedings, civil or criminal, in which any party thereto is engaged in the military or naval service of the United States," which was approved March 16th, 1918.

The construction which has been placed on these laws by Local Boards has not been uniform, and perhaps there has existed a misapprehension in respect to the proper construction thereof, and the scope and purpose of these laws and others of like character.

The purpose and object of the Act of Congress is to provide protection to the soldier and sailor while he is absent in the service of his country and to give him the assurance that, while absent, legal proceedings will not be instituted against him affecting his property and rights of property, and incidentally affecting his family, which would lead to results which might seriously disturb the peace of mind and impair the efficiency of the soldier or sailor while in the service, and at the same time impair and sacrifice the value of his estate, and deprive his family of the comforts which he had provided for them. However, a careful examination of this law shows it was enacted for the soldiers' and sailors' benefit and protection almost exclusively.

The title of the federal Act is: "To extend protection to civil rights of the members of the military and naval establishments of the United States engaged in the present war," which shows clearly it is the *members* (or those who are engaged in the service of their country) who are to be protected, and this protection is given only in case the true and substantial interests of those engaged in the service of their country would be impaired by allowing court proceedings to progress against them during their absence.

Congress has enacted other laws for the protection, maintenance and support of the families of those in the service, and provisions have been made for their wives and children for maintenance and support, which, while not very generous, are supposed to be sufficient in amount to at least keep them from want and discomfort during the absence of the head of the family in the service of his country.

Many Local Boards have failed to be governed by this distinction, and have placed a mistaken construction on this law and held it was enacted for the benefit of the family of those in the service of their country, rather than "for the protection of the *members* of the military and naval establishments of the United States engaged in the present war."

The Act of Congress plainly provides the moratorium is only to be applied and made effective where the interests of those in the service require it, and it provides that the court in which the proceeding is pending may appoint an attorney to represent the defendant, unless he personally appears in the case, or is represented by an attorney.

It is obvious that, in many cases, the true interests of the member in the service of his country would be promoted, rather than impaired, by allowing the case to proceed and the rights of the plaintiff to be enforced during the defendant's absence.

If the party in the service is in debt and his property is encumbered, it certainly would not be to his true interest to allow the accumulation of interest on the debt during his absence, neither would it be to his interest to suspend the collection of taxes on his property, or to neglect to make the necessary repairs thereto. In many instances, if this view be not adopted, and the party remained in the service several years, he would return home to find accumulated arrears of interest and taxes which might be considerable in amount, and his property in a very dilapidated condition.

As above stated, this law was not designed for the benefit of the family of the party in the service. It is for the protection and benefit of the *member* in the service, and the question in all cases is, will his true interest be promoted or impaired by allowing the enforcement of rights against him during his absence?

Again, A. may have loaned money to B. to purchase property. Both A. and B. may be in the service of *their* country, and the families of A. and B. may be alike needy and require all the income they can obtain for their support and maintenance. If the family of B., the borrower, can remain in the possession of the property on which the debt is secured, and not pay interest, during the absence of B., on the debt which he owes to A., then it would be a discrimination in favor of the family of B. against the family of A., which is equally needy, and is morally and legally entitled to the interest on the debt secured on the property of B.

When a party encumbers his property, he does not own the entire subject, but only owns so much thereof as equals its value less the debt secured thereon. He owns no more either in law or in morals, and in equity, if not at law, a creditor whose debt is secured on a property is, to the extent thereof, not only owner, but, perhaps, the paramount owner, of so much of the property as equals the debt which is so secured.

Again, the party in the service may have borrowed from parties who are absolutely dependent on their annual interest for maintenance and support. Aged persons, widows and orphans are interested in large amounts which have been loaned, in some instances it may be, to those in the service of their country, and to place a construction on this law which will permit the family of the soldier or sailor to remain in the undisturbed possession of property on which a debt is secured without paying interest thereon, or to remain in the possession of property rented without paying the rent agreed to be paid therefor, is clearly not what was contemplated by the terms of this Act; for, as above stated, the Act is "for the protection of the *members* of the military and naval establishments of the United States."

The Act in question is an Act of Congress, and it is extremely doubtful, as a legal proposition, whether Congress has the power to enact such a law, and if it has the power, whether such law has any validity excepting in the District of Columbia and the Territories. If sustained as valid, it probably would be only because it would be construed as a war measure.

In III Am. & Eng. Ency. Law (1st Ed.) p. 741, it is stated: "There is nothing in the Constitution which forbids Congress to pass laws impairing the obligation of contracts," citing Evans *v.* Eton, 1 Pet. C. C. 322, 327; Hopkins *v.* Jones, 22 Ind. 310. While this may be true, it is not probable that our courts would be willing to uphold an Act of Congress which impairs the obligation of a contract, and to do so would be most dangerous and might lead to very serious complications.

It has been held by the federal courts, and by the courts of the different States, that if any subsequent law operates to diminish the duty or to impair the right which the law defines upon the consummation of a contract, it necessarily bears upon the obligation of the contract, in favor of one party, to the injury of the other; and hence any law which in its operation amounts to a denial or obstruction of the rights accruing by the contract, although professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution. (See 2 Howard [U. S.] 608; 16 Cal. 11; 5 Bland [Mich.] 509; 10 Ga. 190; 2 Duv. [Ky.] 20; 4 La. 86; 33 Penn. State 202; 96 U. S. 176; 5 Dill [U. S.] 414; 3 McLean [U. S.] 397.)

It is further held that legislation that materially alters the character of the obligation is certainly bad. Thus, laws may be invalid that change the dimensions of the liability, as, for example, the length of its existence.

(See 39 Penn. State 435; 75 Tex. 624; 26 Gratt. [Va.] 131; 74 Md. 232; 39 N. J. L. 326.)

The court in the case of People ex rel. Reynolds *v.* Common Council, 140 N. Y. 300, 307, said:

> "All contract obligations are protected from impairment by State legislation by the provision of the Federal Constitution. The obligation of a contract is impaired in the constitutional sense by any law which prevents its enforcement, or which materially abridges the remedy for enforcing it which existed when it was contracted, and does not supply an alternative remedy equally adequate and efficacious. (McGahey *v.* O'Brien, 111 N. Y. 1)."

In the case of Davis *v.* Supreme Lodge, Knights of Honor, 165 N. Y. 159, 170, the court said:

"All contracts are supposed to be made with reference to existing laws, and subsequent legislation which effects unreasonable changes in the rules of evidence for the enforcement of the contract, or which repeals laws upon which its validity or enforcement depends, impairs the obligation of the contract within the restrictions of the Constitution. (McGahey *v.* Virginia, 135 U. S. 662; People ex rel. Reynolds *v.* Common Council, 140 N. Y. 300)."

In the case of the Town of Cherry Creek *v.* Becker et al., 123 N. Y. 11, 170, the Court of Appeals said:

"The obligation of an existing contract can no more be impaired by an amendment to the Constitution of a State than by an act of the Legislature."

Section 8 of Article I of the Federal Constitution defines the powers of Congress, and there is nothing in its terms which would authorize even Congress to declare a moratorium.

Article X of the Federal Constitution reads as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

If such a law is applicable to the several States of the Union, it would probably be held to be an invasion of their reserved rights, and to affect and deal with subjects which have uniformly been held to be the subject of state legislation and jurisdiction.

As to whether the courts would hold, as above indicated, that this law applies only to the District of Columbia and to the Territories, has not been determined, and should it be the subject of litigation, perhaps no final conclusion in respect to its true construction will be reached before the Act expires by its own limitation, which is six months after the termination of the war.

The Act of the Legislature of Virginia, above referred to, applies to all proceedings, both civil and criminal, in which any party thereto is engaged in the military or naval service of the United States. This act provides only for a *continuance* of the proceedings while such party is so engaged, and the party must have a *substantial* interest in the pending case.

This Act is of questionable validity, from a legal standpoint. It is vague and indefinite. It provides that the case shall be continued "while such party is so engaged in the present war." There may be some in the service who will be continued a number of years, and having entered the service "in the present war," as long as they remain, either in this or in foreign lands (if this Act is valid), it might be construed that such party, as long as he is in the service "is so engaged."

Again, Article I, Section 10, of the Constitution of the United States, among other things provides that "no State shall pass any law impairing the obligation of contracts" and it is very probable, should a case be made up and reach our courts, that this Act of the Legislature of Virginia would be held to be a law impairing the obligation of contracts. It will be noted that this section of the Constitution does not contain an exemption permitting a State to enact a law impairing the obligations of contracts in war time, i. e., this prohibition seems to apply to all time, as much during war as during peace.

If the views above expressed of the Act of Congress be accepted as correct (which we think is the case), and the best interest of the party in the service is the determining factor, then it would seem perhaps not many cases will arise of hardship to either those having rights against a party in the service, or such party or his family.

At the close of the Civil War, and for some years thereafter, the whole South was confronted with financial embarrassment, etc., growing out of conditions which then existed.

The people of the entire South had new conditions to deal with, in addition to their financial embarrassment, and needed time to get on a peace basis. Many of the States enacted Stay and Moratorium Laws of different types, and the Legislature of the State of Virginia enacted a law entitled "An Act to stay the collection of debts for a limited period," which was approved March 2nd, 1866 (see Acts of 1865-6, p. 180).

Section I provided for a stay of proceeding in the cases enumerated, until January 1st, 1868; Section II prescribed cases to which Section I should not apply; Section III related to renewal obligations entered into for liabilities incurred prior to April,

1865; Section IV prescribed that while the Act was in force, a sum equal to the interest for one year on the principal of the debt remaining unpaid, should be paid; Section V authorized proceedings to collect the interest if the debtor failed to pay it, and the other sections of this act touch on various subjects germane to its object, and the whole Act is of historical interest as touching a subject similar to that dealt with by the Act of Congress and the Act of the Virginia Legislature above referred to.

By Act approved December 15th, 1866, it was provided that one year's interest should be paid on each succeeding first day of January while the Act remained in force. By Act approved January 4th, 1867, there was a further amendment of certain sections of the Act of 1866. Another Act was approved February 11th, 1867, which amended certain sections of the Original Act approved March 2nd, 1866. Sec. I of the original Act was again amended, March 2nd, 1867, providing for a stay in the cases specified until the 1st day of January, 1869.

The validity of this legislation came before our Court in the case of Taylor *v.* Stearnes (1868), 18 Gratt. 244, and our Court held the stay law of 1866 was unconstitutional as to deeds of trust, and that, where the trust provided for the time and terms of sale, upon the failure of the grantor to pay the debt, this provision of the deed is of the obligation of the contract, and the Act of the Assembly, 1865-6, "To stay the collection of debts for a limited period," which forbade sales under a deed of trust until January 1st, 1868, "is in relation to such deeds of trust, unconstitutional."

In the case of Utterbach *v.* Rixey (1868), 18 Gratt. 313, it was held that, where a creditor gave up a substantial part of the debt due prior to 1866, etc., in consideration of a new security for the payment of the debt or any part thereof, such new security comes within the saving of the second section of the Act to stay the collection of debts for a limited period, approved March 3rd, 1866, and may be enforced according to its terms.

In the case of Garland *v.* Brown's Admr. (1873), 23 Gratt. 173, the stay law of 1870 was held to be constitutional, but it will be observed that this did not go to the right (or impair the right) of the creditor, but simply related to the remedy for the collec-

tion of the debt, and the Act in question simply required, when the officer made forced sale (when the debtor required it), he should sell upon a credit of twelve months, which was not an unreasonable provision, and affected the remedy alone.

This Act was held to be constitutional, and one which did not impair the obligation of contracts, for the simple reason that it was a reasonable one, relating to the remedy, and did not materially affect or impair the right—in other words, it was a humane provision which the Legislature had a right to impose on the creditor.

It was decided in 1872, Homestead Cases, 22 Gratt. 266, that the provision of the new Constitution as to Homestead Exemption was unconstitutional so far as it applied to debts contracted before the adoption of the Constitution of 1869, i. e., this new Constitution, as to its homestead provision, was in conflict with Article 8, Section X, of the Constitution of the United States which provides that "no State shall pass a law impairing the obligation of contracts," and it further held that a state court had jurisdiction to decide that a provision of the Constitution of the State is in violation of the Constitution of the United States.

It was also held in Farmers' Bank of Va. *v.* Gunnells' Admx (1875), 26 Gratt. 131, that an ordinance of the Convention of 1861 as to negotiable notes, made and discounted before its adoption, was in violation of the provision of the Constitution of the United States above referred to.

It was likewise held in Roberts' Admr. *v.* Cocke (1877), 28 Gratt. 207; Cecil *v.* Deyerle (1877), 28 Gratt. 775; and Kent's Admr. *v.* Kent (1877), 28 Gratt. 840, that a statute allowing interest during the war to be remitted was unconstitutional, and that the Act specified (which conferred upon courts and juries power to remit interest as therein provided) was null and void; and so much of the Act as empowered courts to review judgments and decrees, and remit interest as therein provided, was in violation of the above provisions of the Constitution of the United States and all these States, and therefore void.

It was also held in Ratcliffe *v.* Anderson, 31 Gratt. 105, 108, 113, that the Act of the Assembly, March, 1873, which authorized a review of judgments rendered on Confederate contracts,

and that the court should fix, settle and direct at what depreciation, or how such judgment or decree shall be discharged, was an unconstitutional Act and void so far as it authorized the re-opening of judgments rendered since March 3rd, 1866, both because it was an infringement upon the powers of the judicial department of the Government, and because it impaired the obligation of contracts.

There were other decisions of our court, of like tenor, in the following cases: Antoni *v.* Wright, 22 Gratt. 833; Clarke *v.* Tyler, 30 Gratt. 137-8, 143-45, 147-162; Williamson *v.* Massey, 33 Gratt. 246-7-8; Hartman *v.* Greenhough, 102 U. S. 672; Com. *v.* Maury, 82 Va. 883; Bank of Old Dominion *v.* McVeigh, 20 Gratt. 457.

It will thus appear that although the people of the Commonwealth of Virginia labored under stress of great financial and other embarrassment at the close of the Civil War, our courts did not hesitate, when passing on the validity of laws to stay the collection of debts and proceedings, to uphold the provisions of the Constitution of the United States and our Constitution, and place a fair construction thereon in respect to all laws impairing the obligation of contracts.

The Constitution of the United States provides for the suspension of the writ of habeas corpus during war, as a war measure, but it does not provide or permit a State to pass a law, either in times of peace or war, which impairs the obligation of contract, and no such power was delegated by the people of the United States to the Congress of the United States, either expressly or by implication: and it is respectfully submitted that the Congress of the United States does not possess any power to enact a law impairing the obligation of contracts which should be upheld even in the District of Columbia or the Territories of the United States.

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